



CITY OF
PORTLAND, OREGON
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October 23, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CTIA Petition for Declaratory Ruling, WT Docket 08-165
Ex parte communication pursuant to Section 1.1206 of the Rules.

Dear Ms. Dortch::

On behalf of the City of Portland, Oregon, representatives of the City of Portland, including Commissioner Nick Fish, Hannah Kuhn, Brendan Finn, Dan Bates, David C. Olson, Mary Beth Henry, and myself, met with Commissioner Jonathan Adelstein and Rudy N. Brioché and Roger Goldblatt, legal advisors to Commissioner Adelstein during their recent visit to Portland. Among unrelated topics such as media concentration and digital television conversion, the City representatives identified concerns regarding the time frames advocated by the CTIA for processing wireless tower zoning filings and the implications for preemption of procedural time frames determined by Oregon's land use statutes. Oregon's procedural time frames are described in the attached sheet. The City of Portland has participated in filing comments in the above-captioned proceedings.

Please direct any questions to the undersigned.

Very truly yours,

Benjamin Walters
Chief Deputy City Attorney



Time Limits for Land Use Decision Making for Oregon Cities

Oregon law recognizes that a land use applicant deserves a speedy decision on a land use application and certainty about the criteria that will be used to judge the application. Under state law, the City of Portland has 120 days to make a final decision on a quasi-judicial land use application (ORS 227.178(1)). This means that all stages of decisionmaking, including local appeals, must be completed within this 120-day period. The 120-day deadline applies to discretionary permits (such as conditional use permits or adjustments), zone changes, and limited land use decisions (defined as land divisions and design review). It does not apply to comprehensive plan amendments or legislative matters.

The 120-day clock begins to run on the date a land use application is deemed to be complete. The applicant may extend the 120-day period for a maximum of 245 additional days. The applicant is the only person who can extend this 120-day deadline (ORS 227.178(5)). If the City fails to make a final decision on a land use application within the 120-day deadline, the applicant may go to court for a writ of mandamus ordering the City to approve the application. If the court issues the writ and directs the City to approve the application, the City is obligated to pay the applicant's attorney fees (ORS 227.179). A second consequence of failing to meet the 120-day deadline is that the City must refund half of the application fees paid by the applicant (ORS 227.178(8), (9)).

When the City receives a land use application, staff has 30 days to review the application and to notify the applicant if it is incomplete. If the application is incomplete, state law gives the applicant 180 days from the submittal date to supply any missing information. The application is deemed complete on the date when staff receives the following from the applicant: (1) all of the missing information; (2) some of the missing information and a written statement that no other information will be provided; or (3) a written statement that none of the missing information will be provided. If the applicant fails to provide any of these responses within the 180-day period, the City may void the application on the 181st day after it is submitted (ORS 227.178(2), (4)).

If the application was complete when first submitted or the application supplies some or all of the missing information within the 180-day period, the City must approve or deny the application using the criteria in effect on the date the application was first submitted. This is known colloquially as the "no changing the goal posts rule." (ORS 227.178(3)(a))